

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION 9273 OF 2014
WITH
CIVIL APPLICATION 1634 OF 2016
IN
WRIT PETITION 9273 OF 2014**

Dilip Pandurang Gurav ... Petitioner

V/s.

Narayan Bapu Mane & Ors. ... Respondents

Mr. S.G. Deshmukh a/w. Mr. Ramdas A. Shelke for the
Petitioner.

Mr. U. R. Mankapure for the Respondents.

CORAM : ROHIT B. DEO, J.

DATE : 22nd JUNE 2022

P.C.

1. The challenge in the petition is to the order dated 19.09.2014 rendered by the learned Joint Civil Judge, Junior Division, Tasgaon in Regular Civil Suit 14 of 2010 whereby, the application preferred by the petitioner – plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (Code) is rejected.

2. The learned Trial Judge has given three reasons for refusing to permit the amendment.

3. The learned Trial Court has recorded a finding that paragraph 3 of the proposed amendment seeks to incorporate new cause of action. The other reason given is that the nature of the property is sought to be changed and the third reason is that the trial has already commenced.

4. Notably, the plaintiff has filed an affidavit in lieu of oral examination in chief, which was not proved in the sense that the plaintiff was yet to enter the witness box. In this view of the matter, and considering the developments and changing judicial opinion, it is debatable whether the trial has commenced. However, no definite observation need to be made since in my view the subsequent events necessitated the amendment, and even if it is assumed that the proviso to Order VI Rule 17 is triggered, the amendment could not have been refused on the ground of commencement of trial.

5. The suit is instituted seeking recovery of possession land admeasuring 22 Are which according to the plaintiff is encroached by the defendant 1. All that is sought to be incorporated is a reference to the partition suit decision dated 03.02.2014 and the consequential correction of the description of the suit property. I have compared the original pleadings and the amended pleadings and it is difficult to agree with the learned Trial Judge who has found that there is a change in the suit property. Equally fallacious is the observation of the learned Trial Judge that the cause of action pleaded is new or that there would be prejudice to the defendants. After comparing the original pleadings with the proposed amendment, I find that the amendment seeks to clarify and amplify certain peripheral aspects and in view of the matter can it be said that the structure of the suit is changed or that there would any prejudice to the defendants. The order impugned is unsustainable in the eyes of law and is set aside.

6. The application (Exh.16) in Regular Civil Suit 14 of 2010 is allowed.

7. Needless to observe the defendants shall be at liberty to consequentially amend the written statement.
8. Petition is allowed in the aforestated terms.

(ROHIT B. DEO, J.)